

519). Alternatively, the court may use its discretion to stay the habeas proceeding while the petitioner returns to state court with his unexhausted claims. Id. at 276-77.

Respondent presents evidence that petitioner exhausted only his first two grounds for relief in state court – one based on a juror bringing extraneous notes into juror deliberations and another based on the trial court's decision to not permit petitioner to present evidence of the murder victim's violent tendencies. Thus, petitioner did not exhaust his third or fourth grounds for relief, each of which raises several claims. Petitioner does not deny that he failed to exhaust all but his first two claims. Petitioner asks me to not dismiss his petition, but rather to permit him to "disregard" the third and fourth grounds for relief and permit him to proceed "with only issues 1 & 2." (Letter from Owens to Court Filed February 29, 2008.) Thus, I will deny respondent's motion and permit petitioner to voluntarily dismiss his third and fourth ground for relief.

As for briefing petitioner's first and second claims, petitioner has stated that he wishes to rely on his opening brief filed in state court. (Letter from Owens to Court Filed February 29, 2008.) Below, I will set a schedule for filing the remaining briefs.

For the reasons stated,

IT IS ORDERED that respondent's motion to dismiss is **DENIED**.

IT IS FURTHER ORDERED that petitioner's third and fourth grounds for relief, as described in his petition, are **VOLUNTARILY DISMISSED**.

IT IS FURTHER ORDERED that respondent shall have forty-five (45) days from the date of this order within which to file a brief in opposition to the petition.

IT IS FURTHER ORDERED that petitioner shall have thirty (30) days following the filing of respondent's brief within which to file a reply brief, if any.

Dated at Milwaukee, Wisconsin, this 22 day of April, 2008.

/s _____
LYNN ADELMAN
District Judge